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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

NGOC LAM CHE, an individual

Plaintiff,

vs.

KENZO PROPERTIES, LLC, a limited liability  
company;

Defendants.

Case No: 5:23-cv-04304

**COMPLAINT FOR**

- (1) VIOLATION OF THE UNRUH  
CIVIL RIGHTS ACT (CALIFORNIA  
CIVIL CODE §§ 51, 52);**
- (2) VIOLATIONS OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990**

**I.**  
**SUMMARY**

1. This is a civil rights action by Plaintiff Ngoc Lam Che (“Plaintiff”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex bearing the legal address of: 5465 Snell Ave., San Jose, California 95123 (the “Property”), from which the “KENZO SUSHI” operates. Plaintiff frequents lives approximately 15 minutes from the Property and the restaurant is conveniently located.

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) and related California statutes<sup>1</sup> against Defendant, the tenant and owner of the Property, KENZO PROPERTIES, LLC, a limited liability company (“Defendant”).

**II.**  
**JURISDICTION**

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

**III.**

**VENUE**

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

**IV.**

**PARTIES**

7. Defendant is, or was at the time of the incident, the owner, operator, lessor and/or

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<sup>1</sup> Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may amend his complaint at a later time upon discovery of facts which give rise to such a claim.

V.

b. The restrooms serving the Property are not properly configured, including but limited to under the sink piping that is not properly covered. As a result, Plaintiff cannot comfortably reach the sink to wash his hands, for fear of burning his legs on the uncovered piping.

1 c. The restrooms do not contain the required signage to indicate that the restrooms are  
2 accessible.

3 **11.** These barriers to access are listed without prejudice to Plaintiff citing additional  
4 barriers to access after inspection by Plaintiff's access consultant, per the 9th Circuits standing  
5 standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008). These barriers prevented  
6 Plaintiff from enjoying full and equal access to the Property.

7 **12.** Plaintiff thus experienced difficulty, discomfort and embarrassment, from visiting the  
8 Property and/or otherwise was deterred from visiting the Property because of the accessible barriers.  
9 Plaintiff would patronize the Property once the barriers are removed as he desires to patronize the  
10 businesses located on the Property. Within twelve months of the correction and/or removal of the  
11 barriers, Plaintiff would return to the Property to not only patronize the restaurant at the Property but  
12 also to ensure the Property's compliance with the ADA.

13 **13.** On information and belief, Plaintiff alleges that Defendant knew that these elements  
14 and areas of the Property were inaccessible, violate state and federal law, and interfere with (or  
15 deny) access to the physically disabled. Moreover, Defendant has the financial resources to remove  
16 these barriers from the Property (without much difficult or expense), and make the Property  
17 accessible to the physically disabled. To date, however, the Defendant refuses to remove those  
18 barriers.

19 **14.** At all relevant times, Defendant has possessed and enjoyed sufficient control and  
20 authority to modify the Property to remove impediments to wheelchair access and to comply with  
21 the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. Defendant  
22 has not removed such impediments and has not modified the Property to conform to accessibility  
23 standards.

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VI.

**FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW INCLUDING: THE  
UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE AMERICANS WITH DISABILITIES ACT  
AS INCORPORATED BY CIVIL CODE SECTION 51(f)**

15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14 for this claim and incorporates them herein.

16. At all times relevant to this complaint, California Civil Code § 51 has provided that physically disabled persons are free and equal citizens of the state, regardless of disability or medical condition:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Cal. Civ. Code § 51(b).

17. California Civil Code § 52 provides that the discrimination by Defendant against Plaintiff on the basis of his disabilities constitutes a violation of the anti-discrimination provisions of §§ 51 and 52.

18. Defendant's discrimination constitutes a separate and distinct violation of California Civil Code § 52 which provides that:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to section 51, 51.5 or 51.6 is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5 or 51.6.

19. Any violation of the Americans with Disabilities Act of 1990 (as pled in the Second

1 Cause of Action) constitutes a violation of California Civil Code § 51(f) thus independently  
 2 justifying an award of damages and injunctive relief pursuant to California law. Per § 51(f), “[a]  
 3 violation of the right of any individual under the Americans with Disabilities Act of 1990 ... shall  
 4 also constitute a violation of this section.”

5 **20.** Plaintiff continues to be deterred from visiting the Subject Property based upon the  
 6 existence of the accessible barriers. In addition to the occurrence in April 2023 Plaintiff is also  
 7 entitled to \$4,000.00 in statutory damages for each additional occurrence of discrimination under  
 8 California Civil Code § 52, which continue to occur during the course of this action.

9 **21.** The actions and omissions of Defendant as herein alleged constitute a denial of access  
 10 to and use of the described public facilities by physically disabled persons within the meaning of  
 11 California Civil Code §§ 51 and 52. As a proximate result of Defendant’s action and omissions  
 12 Defendant has discriminated against Plaintiff in a violation of Civil Code §§ 51 and 51.

## 13 VII.

### 14 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH** 15 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 et seq.)**

16 **22.** Plaintiff incorporates the allegations contained in paragraphs 1 through 20 for this  
 17 claim and incorporates them herein.

18 **23.** As part of the Americans with Disabilities Act of 1990 (“ADA”), Congress passed  
 19 “Title III – Public Accommodations and Services Operated by Private Entities.” 42 U.S.C. § 12181  
 20 et seq. The Property is one of the “private entities” which are considered “public accommodations”  
 21 for purposes of this title, which includes any “restaurant, bar, or other sales or rental establishment  
 22 serving food or drink.” § 301(7)(B).

23 **24.** The ADA states that “[n]o individual shall be discriminated against on the basis of  
 24 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or  
 25 accommodations of any place of public accommodation by any person who owns, leases, or leases  
 26 to, or operates a place of public accommodation.” 42 U.S.C. § 12182.

1           **25.**     The acts and omissions of Defendant set forth herein were in violation of Plaintiff's  
2 rights under the ADA and the regulations promulgated thereunder, 28 CFR Part 36 *et seq.*

3           **26.**     The removal of each of the barriers complained of by Plaintiff as hereinabove alleged,  
4 were at all times herein mentioned "readily achievable" under the standards §§ 301 and 302 of the  
5 ADA. As noted hereinabove, removal of each and every one of the architectural barriers complained  
6 of herein were also required under California law. Further, on information and belief, alterations,  
7 structural repairs or additions since January 26, 1993 have also independently triggered requirements  
8 for removal of barriers to access for disabled persons per § 303 of the ADA. In the event that  
9 removal of any barrier is found to be "not readily achievable," Defendant still violated the ADA,  
10 per § 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and  
11 accommodations through alternative methods that were readily achievable.

12           **27.**     On information and belief, as of the date of Plaintiff's encounter at the Property and  
13 as of the filing of this Complaint, the Defendant has denied and continues to deny full and equal  
14 access to Plaintiff and to other disabled persons, including wheelchair users, in other respects, which  
15 violate Plaintiff's rights to full and equal access and which discriminate against Plaintiff on the basis  
16 of his disability, thus wrongfully denying to Plaintiff the full and equal enjoyment of the goods,  
17 services, facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303 of the  
18 ADA. 42 USC §§ 12182 and 12183.

19           **28.**     On information and belief, Defendant has continued to violate the law and deny the  
20 rights of Plaintiff and other disabled persons to access this public accommodation since on or before  
21 Plaintiff's encounters, as previously noted. Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*,  
22 Plaintiff is entitled to the remedies and procedures set forth in § 204(a) of the Civil Rights Act of  
23 1964, 42 USC 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability  
24 in violation of the ADA or has reasonable grounds for believing that he is about to be subjected to  
25 discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)(2)(A)(iv) and § 303(a) ...  
26 injunctive relief shall include an order to alter facilities to make such facilities readily accessible to  
27 and usable by individuals with disabilities to the extent required by this title."  
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## PRAAYER

1. Issue a preliminary and permanent injunction directing Defendant as current owners, operators, lessors, and/or lessees of the Property and premises to modify the above described Property and premises and related facilities so that each provides full and equal access to all persons, including but not limited to persons with physical disabilities who use wheelchairs, and issue a preliminary and permanent injunction directing Defendant to provide and maintain facilities usable by Plaintiff and similarly situated persons with disabilities, and which provide full and equal access, as required by law, including appropriate changes in policy;

3. Award to statutory damages of \$4,000 for each occurrence of deterrence or discrimination experienced by Plaintiff until a final judgment is rendered in this case, all according to proof;

5. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and costs of this proceeding as provided by law;

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2 7. Grant such other and further relief as this Court may deem just and proper.

3 ASCENSION LAW GROUP, PC

4 DATE: August 23, 2023

5           /s/ Pamela Tsao          

6 Pamela Tsao, attorney for Plaintiff

7 Ngoc Lam Che  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

ASCENSION LAW GROUP, PC

DATE: August 23, 2023

/s/ Pamela Tsao

Pamela Tsao, attorney for Plaintiff

Ngoc Lam Che